

## **RULE PROPOSALS**

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### **INTERESTED PERSONS**

The Department of Corrections provides notices of rule proposals in the New Jersey Register (N.J.R.), a semi-monthly official publication of the Office of Administrative Law which contains all State agency rule proposals and adoptions. The following paragraph is quoted from the Proposal section of the New Jersey Register:

**Interested persons** may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

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### **CORRECTIONS**

#### **THE COMMISSIONER**

##### **Open Public Records**

**Proposed Amendments:** N.J.A.C. 10A:1-1.4; 10A:16-2.18; 10A:17-7.1; 10A:18-2.6, 2.7, 4.5 and 4.7; 10A:19-2.3; 10A:22-1.1, 1.2, 1.3, 2.1, 2.5, 2.7 and 2.12; 10A:23-2.4, 2.8 and 2.20; and 10A:31-6.8 and 6.13

**Proposed New Rules:** N.J.A.C. 10A:22-1.4, 1.5, 2.2, 2.3, 2.4, 2.8, 2.9, 2.10, 2.12, 2.13, 3.1 and 3.2; and 10A:31-6.5, 6.6 and 6.7

**Proposed Repeals:** N.J.A.C. 10A:1-10.5; 10A:17-4.8; 10A:22-2.2, 2.3, 2.4, 2.8, 2.9 and 2.10; and 10A:31-6.5, 6.6, 6.7, 6.10, 6.11 and 6.12.

Authorized By: Devon Brown, Commissioner,  
Department of Corrections.

Authority: N.J.S.A. 30:1B-6, 30:1B-10, 30:4-123.47c, 47:1A-1 et seq., 2C:49-3, 2C:49-7 and 52:14B-3; Executive Order No. 9 (Hughes 1963), and N.J.A.C. 13:35-6.5.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2002 - 228.

Submit comments by September 11, 2002 to:

Stan Repko, Director  
Office of Policy and Planning

Department of Corrections  
P.O. Box 863  
Trenton, New Jersey 08625-0863

The agency proposal follows:

### **Summary**

On January 8, 2002, the Legislature passed and the Acting Governor approved P.L. 2001, c. 404, which enacted changes in the law concerning public access to government records. The law will be effective July 7, 2002. The Department of Corrections herein proposes new rules, amendments and repeals in order to bring the Department into compliance with the law. This law expands the public's right of access to government records and facilitates the way in which that access is provided by the custodian of those records. Section 18 of the law authorizes public agencies to take anticipatory administrative action in advance as may be necessary for the smooth and efficient implementation of the act. The Department of Corrections proposes rules establishing the process by which members of the public may seek access to government records in the possession or control of the Department or agencies within the Department under the revised law. The act requires the custodian of government records of a public agency to adopt a form for providing public access to government records.

The Commissioner of the Department of Corrections has directed that correctional facility Superintendents shall be known as Administrators; accordingly, references to Superintendent have been amended throughout the proposed text.

References to "public record(s)" throughout the text have been deleted and replaced with "government records." Where appropriate throughout the text, cross-references to the Open Public Records Act at N.J.S.A. 47:1A-1 et seq. have been added. The rules proposed for repeal represent provisions that reference information or documents previously determined to be confidential and are deleted to comply with the law as set forth at N.J.S.A. 47:1A-1 et seq.

Effective September 1, 2001, P.L. 2001, c. 79 transferred the Bureau of Parole in the Department of Corrections to the New Jersey State Parole Board as the Division of Parole; therefore, references to parolees throughout the text have been deleted.

The existing cite references to the legislation regarding the reimbursement for costs of copying at N.J.A.C. 10A:1-1.4, existing 10A:22-2.12 (recodified as 2.14), and 10A:31-6.13 have been amended in accordance with the newly enacted and recodified provisions of the Open Public Records Act and a new provision regarding additional fees has been added.

The rule at N.J.A.C. 10A:1-10.5 is unnecessary, has been repealed and the section placed into reserved status because rules regarding records that are exempted from access to the public are proposed in N.J.A.C. 10A:22-3.

N.J.A.C. 10A:16-2.18(g) has been amended to refer to the entire chapter at N.J.A.C. 10A:22 and any other statutes and regulations.

N.J.A.C. 10A:17-7.1(d)11 has been deleted because release of such information shall be handled in accordance with the rules proposed at N.J.A.C. 10A:22-2 and 3.

N.J.A.C. 10A:18-2.6(h), 2.7(f), 4.5(b) and 4.7(f) have been deleted because such information shall no longer be maintained unless it is part of a Special Investigations Division investigation, in which case, it shall be handled in accordance with the rules proposed at N.J.A.C. 10A:22-2 and 3.2.

N.J.A.C. 10A:19-2.3(a) and (c) have been deleted because release of such information shall be handled in accordance with the rules proposed at N.J.A.C. 10A:22-2 and 22-3.

Amendments, new rules and repeals to existing rules at N.J.A.C. 10A:22, Records, have been proposed to establish provisions for public access to government records in accordance with the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.). A new purpose regarding requests for government records has been added to N.J.A.C. 10A:22-1.1(a). N.J.A.C. 10A:22-1.2 has been amended to state the scope and applicability of the rules contained in the subchapter. These new rules apply to agencies under the supervision of the Commissioner of the Department of Corrections.

In accordance with the definitions established in N.J.S.A. 47:1A-1 et seq., definitions for “custodian of a government record” or “record custodian” and “government record” or “record” have been added for informational purposes at N.J.A.C. 10A:22-1.3. New N.J.A.C. 10A:22-1.4 has been added to establish provisions regarding the availability of Form 110 Department of Corrections Request for Government Records.

New N.J.A.C. 10A:22-1.5 provides that the Commissioner will designate a person to be Department records custodian. The address of the custodian is set out in this rule and will be made available to the public by posting on the Department of Corrections web site.

The act provides that all government records shall be subject to public access unless exempt from such access by: P.L. 1963, c.73 as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Rules of Court; any Federal law, Federal regulation or Federal order. The Commissioner, pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), proposes to classify as exempt from public access certain records held or controlled by the Department or agencies within the Department of Corrections. The act also provides that a public agency should be mindful of the need to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy. The rules proposed in N.J.A.C. 10A:22-2 and 3 are designed to serve both these legislative policies by facilitating public access to government records while, at the same time, balancing citizens' reasonable expectations of privacy and the integrity and effectiveness of governmental operations.

The proposed rules in N.J.A.C. 10A:22-2 establish a process to be followed by members of the public who seek access to government records held or controlled by agencies within the Department.

The heading of N.J.A.C. 10A:22-2.1 has been amended to reflect that the contents of the section relates to information pertaining to a victim(s). Subsection (a) has been amended to include the statutory authority and to reflect the language of the law. Existing Subsection (b) requiring review and release authorization by the Commissioner or designee has been deleted.

Proposed new N.J.A.C. 10A:22-2.2 provides that all requests for access to government records under the public access to government records law must be on a form approved by the Department. The requester will be asked to provide certain information on the form, including a name, address and telephone number; a brief description of the records requested, type of access (examination, inspection or copying) and medium requested; and the requester's signature and date submitted to the proper custodian. The

form will also provide space for: specific directions and procedures for requesting a government record; which records will be made available; when the record will be available; the fee to be charged; the amount of prepayment of fees that is required; a statement of the requester's right to challenge a denial and the procedures for challenging a denial; whether the requester has agreed to grant an extension of time; the toll free number of the Government Records Council; a certification by the requester that they have not been convicted of an indictable offense; the custodian to sign and date; and reasons if access is denied. Copies of the form will be available at division and agency offices and on the Department of Corrections web site.

Proposed new N.J.A.C. 10A:22-2.3 establishes the procedure for submitting requests for access to government records. Forms may be hand-delivered during normal business hours, mailed or transmitted electronically by e-mail to the appropriate division or agency custodian. All requests must be delivered to the appropriate Departmental custodian of records in order to trigger the requirements of the public access to government records law. Upon receipt of the form, the custodian will review it for clarity and completeness and will advise the requester of any deficiencies or request additional information, provided the requester has included contact information. The requester's identity will be required in order to ensure compliance with the provision of the law that prohibits a person convicted of an indictable offense under the laws of this State, any other state or the United States, from receiving personal information concerning the person's victim or the victim's family. Requests for records will be assigned a tracking number, which will be used to track the request and respond to inquiries. The custodian will estimate the fee, including the cost of any special form of mailing requested. A request shall not be deemed complete until any prepayment required is received by the custodian. A requester will also be required to prepay any special mailing or delivery costs such as UPS or Express Mail. A requester will not be charged for ordinary mailing costs. There is no charge for merely inspecting records.

Proposed new N.J.A.C. 10A:22-2.4 provides that the balance of any fee over and above the estimated prepaid fee is due on delivery of the record. A cross-reference to existing N.J.A.C. 10A:22-2.8 has been deleted from existing text at N.J.A.C. 10A:22-2.5(a) because the existing section has been repealed. A cross-reference to agency regulations regarding medical summaries has been added to N.J.A.C. 10A:22-2.7(a).

Proposed new N.J.A.C. 10A:22-2.8 specifies the records for which a citizen is ordinarily entitled to immediate access. These documents include budgets, bills, vouchers, contracts and public employee salary and overtime information.

Proposed new N.J.A.C. 10A:22-2.9 provides that, except as otherwise provided by law, if the custodian fails to grant access to a government record within seven business days after the custodian receives the completed request or such other time as may be required under the law or may be agreed upon, the failure will be deemed a denial of the request for access. As provided in the statute, a custodian need not respond to an anonymous request until the requester reappears before the custodian.

Proposed new N.J.A.C. 10A:22-2.10 provides that if requested records are stored in an offsite storage facility outside of the regular business office of the Department, the custodian will advise the requester of the date the records will be available and the estimated cost within seven business days of receipt of the request form. This section codifies the requirements of the statute.

Proposed new N.J.A.C. 10A:22-2.11 codifies the requirements of the statute concerning delivery of records in the medium requested. The custodian will deliver the record in the medium requested unless the agency does not maintain the record in that medium and cannot reasonably convert it. In such a case, the custodian will advise the requester of the cost of providing the record in the medium requested. Such charge may include labor.

New N.J.A.C. 10A:22-2.12 deals with the computation of time. Consistent with statutes, court rules and case law, it provides that in computing the time period for granting access, the day the request is received is not included in the computation, but the last day of the period so computed is to be included. This section also clarifies that a request is not complete until all necessary information is provided by the requester and all applicable fees are paid.

The new subchapter at N.J.A.C. 10A:22-3, Confidentiality of Records, contains a list of records deemed by the Commissioner to be confidential and not subject to public access under the provisions of N.J.S.A. 47:1A-1 et seq. as amended and supplemented. This subchapter is proposed under the authority of N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963). Under authority of the statute, that Executive Order authorized the head or principal executive of each principal Department of State government to adopt and promulgate regulations setting forth which records of the department shall not be deemed public records. The regulations apply to all divisions within the department as well as those assigned or allocated to the department, commonly known as in, but not of, agencies. New N.J.A.C. 10A:22-3.1 describes the scope and applicability of the subchapter.

New N.J.A.C. 10A:22-3.2 sets forth those records of the Department that are not deemed government records for the purposes of N.J.S.A. 47:1A-1 et seq. as amended and supplemented and establishes the responsibility for access to records of the Department held by the Office of Information Technology (OIT), the State Records Center of the Division of Archives and Records Management (DARM) of the Department of State, or in an offsite storage facility outside of the regular business office of the Department, and furthermore, institutes legal custody of, and responsibility for, access to, records of the Department transferred to the State Archives. Records not considered subject to public access as set forth in N.J.A.C. 10A:22-3.2 and the reasons therefor follow:

At paragraph (a)1, informant documents and statements must be protected from disclosure to ensure the safety of the informant and to be able to assure informants that their identities will be protected in order to obtain their cooperation;

At paragraph (a)2, Special Investigation Division investigations may involve highly sensitive information that does not fall into one of the statutorily exempt categories, for example, security measures and surveillance techniques. The Department only seeks to protect the government record from disclosure if release of the record would jeopardize the safety of any person or the safe and secure operation of the correctional facility;

At paragraph (a)3, documents that identify the physician attending an execution must be protected when necessary to ensure that the Department will be able to fulfill the requirement of N.J.S.A. 2C:49-7;

At paragraph (a)4, documents pertaining to individually identified crime victims, with the exception stated, must be protected because the Department maintains an Office of Victim Services that offers a variety of programs and services to crime victims. N.J.S.A.

47:1A-1 et seq. states that victims' rights agency records are confidential. Although the Department's Office of Victim Services does not meet the technical definition of "victims' rights agency" set forth in the statute, the Department has determined that documents pertaining to individually identified crime victims, with the exception stated must be protected;

At paragraph (a)5, a record which consists of any alcohol, drug or other substance abuse information, assessment, evaluation, report, summary, history, recommendation, treatment, including any assessment instruments, must be protected in order to be consistent with the spirit and intent of Federal and State regulations which protect the confidentiality of substance abuse treatment and testing records in a variety of treatment modalities;

At paragraph (a)6, a report or record relating to an identified individual which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement must be protected because release of any such documents should be conditioned on a review of the document contents to determine whether any information contained therein would adversely affect the safety and security of an individual or facility;

At paragraph (a)7, the comprehensive criminal history information known as the "rap sheet" must be protected because the Department has been advised by the New Jersey Division of Law that an inmate has a privacy interest in such information and that the Department cannot compile a rap sheet on an offender and provide it to the public;

At paragraph (a)8, records generated by or on behalf of the Department in connection with any discrimination or harassment complaint must be protected because the Legislature has protected from disclosure those documents and records related to a sexual harassment complaint, and there is no reasonable basis to differentiate between sexual harassment and other types of discrimination, harassment and retaliation complaints;

At paragraph (a)9, certain information concerning individuals must be protected because release of this information would violate the reasonable expectation of privacy of the individual who is the subject of the record;

At paragraph (a)10, test questions, scoring keys and other examination data must be protected in order to preserve the integrity of the testing process used by the Department;

At paragraph (a)11, certain records of another department or agency must be protected in order to comply with confidentiality rules duly adopted by another department or agency;

At paragraph (a)12, records held by the Office of Information Technology or the Division of Archives and Record Management must be protected in order to ensure that Department records that have been placed in storage are released or withheld in accordance with rules duly adopted by this agency, and

At paragraph (a)13 must be kept confidential because it has been developed for use by the Department in the event of a major disaster or act of terrorism, and includes protocol for maintaining operations, including relocation of inmates.

In order to ensure the reasonable expectation of privacy of individuals, subsection (b) has been added to establish that an inmate shall not be permitted to inspect, examine or obtain copies of documents concerning any other inmate(s).

Informational cross-references to the statutory authority regarding the execution of persons sentenced to death have been added to N.J.A.C. 10A:23-2.4 and 2.8. N.J.A.C.

10A:23-2.8 has been amended to establish that the notification to a physician who shall be present at an execution shall be exempt from public access and the informational cross-reference cite has been added.

Proposed new N.J.A.C. 10A:31-6.5 has been added to set forth that the release of county correctional facility records shall be handled in accordance with internal management procedures developed by county authorities.

Proposed new N.J.A.C. 10A:31-6.6 contains a list of records not deemed government records for the purposes of N.J.S.A. 47:1A-1 et seq. as amended and supplemented. Reasons for determining the confidentiality of those records identified in N.J.A.C. 10A:31-6.6 are identical to the respective reasons previously set forth in this Summary regarding N.J.A.C. 10A:22-3.2(a). In order to ensure the reasonable expectation of privacy of individuals, subsection (b) has been added to establish that an inmate shall not be permitted to inspect, examine or obtain copies of documents concerning any other inmate(s).

Proposed new N.J.A.C. 10A:31-6.7 has been added to establish the provisions related to the release of information regarding a victim or family members of a victim.

Because a 60-day comment period has been provided on this notice of proposal, this notice is excepted from the rulemaking calendar requirement of N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed new rules, amendments and repeals implement the requirements of N.J.S.A. 47:1A-1 et seq. as amended and supplemented by P.L. 2001, c.404. The proposed new rules, amendments and repeals will have a positive social impact by establishing a procedure for public access to government records held or controlled by the Department of Corrections. The law requires that government records be readily accessible for inspection, copying or examination by citizens of this State unless exempt by law or regulation, but also calls upon a public agency to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure would violate the citizen's reasonable expectation of privacy. These proposed new rules, amendments and repeals attempt to balance the competing policies in the statute and to exclude records where it would not be in the public interest to permit indiscriminate disclosure or copying of certain records. The proposed new rules also provide safeguards to protect the legitimate privacy interests of persons and affected parties.

### **Economic Impact**

The proposed new rules, amendments and repeals will not have an economic impact on the public in excess of that provided by the statute. Persons requesting copies of government records will be required to pay the fees authorized by the statute for copies of records. The proposed rules do not impose any additional costs. The cost incurred will depend on the type and volume of records requested and the medium of delivery.

The Department, however, will incur costs in processing requests for access to government records in the time period set by the Act.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed new rules, amendments and repeals are not subject to any federal standards. The Federal Freedom of Information Act, 5 U.S.C. §550a et seq., does not apply to records of State government and does not constitute a Federal standard.

### **Jobs Impact**

The proposed new rules, amendments and repeals will not have an impact on the number of jobs generated or lost in the private sector in New Jersey. The proposed new rules may, however, require the Department of Corrections to increase the number of employees designated to respond to requests for public access.

### **Agriculture Industry Impact**

The proposed new rules, amendments and repeals will not have an impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Analysis**

The proposed new rules, amendments and repeals do not impose reporting or record keeping requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impose compliance requirements on all persons seeking access to government records pursuant to N.J.S.A. 47:1A-1 et seq. as amended and supplemented. All persons, including small businesses, will be required to submit requests for access to government records on a form approved by the Department. The statute requires the custodian of records to adopt a form for access to records. The statute authorizes fees for copies of government records. There is no exception for small businesses. The cost depends on the number of copies requested. The proposed new rules provide that the fee will be the maximum set forth in the statute or a fee authorized by the statute that does not exceed the actual cost of providing the record. The cost to the department of providing the record does not depend on whether the requester is a small business.

### **Smart Growth Impact**

The proposed new rules, amendments and repeals will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

**Full text** of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 10A:1-10.5; 10A:17-4.8; 10A:22-2.2, 2.3, 2.4, 2.8, 2.9, 2.10; and 10A:31-6.5, 6.6, 6.7, 6.10, 6.11 and 6.12.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10A:1-1.4 Reimbursement for costs of copying

(a) Pursuant to N.J.S.A. 47:1A-[2] 5, correctional facilities and other administrative units within the Department of Corrections may charge the following fees for copying **government** records [deemed to be public]:

1.-3. (No change.)

(b) (No change.)

(c) The copying fees for documents or records other than **government** records [deemed to be public] shall also be based on the fee schedule in (a) above.

(d) When or if fees for the copying of [public] **government** records change in accordance with [the] N.J.S.A. 47:1A-[2] 5, these changes shall be published as a notice of administrative change in the New Jersey Register.

**(e) Additional fees that may be imposed in connection with a request for government records are set forth in N.J.A.C. 10A:22-2.3 and 2.12.**

10A:1-10.5 [Inmate/parolee records] **(Reserved)**

[Confidentiality of inmate/parolee records and procedures for release or examination of records by authorized individuals or agencies shall be in accordance with N.J.A.C. 10A:22-2, Records.]

10A:16-2.18 Medical records

(a)-(f) (No change.)

(g) Confidentiality of inmate records shall be maintained [and records released] in accordance with N.J.A.C. 10A:22[-2] **and any other applicable statutes and regulations.**

(h) (No change.)

10A:17-7.1 Procedure for submitting a request to marry

(a) An inmate, who is 18 years of age or older and wishes to marry while serving a sentence at a State correctional facility, shall submit a written request to marry to the [Superintendent] **Administrator** of the correctional facility at which the inmate is currently assigned at least 90 days in advance of the proposed date of the wedding.

(b)-(c) (No change.)

(d) The request to marry shall include:

1.-8. (No change.)

9. A signed statement from the inmate indicating the inmate and/or intended spouse will pay in advance all expenses incurred including, but not limited to:

i.-v. (No change.)

vi. The tolls and parking expenses; **and**

10. A signed statement from the inmate indicating there are no legal restrictions which would prohibit the marriage under law[; and].

[11. A signed statement from the inmate authorizing the release of information to the intended spouse which includes the inmate's custody status, the length and type of sentence and any active detainers. Medical information and any information deemed confidential shall be released to the intended spouse only when specifically authorized by a signed statement from the inmate.]

10A:18-2.6 Inspection and identification of incoming correspondence

(a)-(f) (No change.)

(g) Incoming correspondence shall be opened and inspected for contraband, but it shall not be read unless there is reason to believe that the correspondence contains disapproved content pursuant to N.J.A.C. 10A:18-2.14. If there is reason to believe that the correspondence contains disapproved content, the correspondence shall be read only upon prior authorization of the [Superintendent] **Administrator** or designee.

[(h) A confidential list of the names of inmates whose incoming correspondence is authorized to be read shall be established and maintained in the correctional facility's Special Investigations Division or mail room, or wherever the confidentiality of the list can be maintained.]

#### 10A:18-2.7 Inspection of outgoing correspondence

(a)-(c) (No change.)

(d) Any outgoing correspondence addressed to someone other than those cited in (b) above shall not be opened, read or censored unless there is reason to believe that the correspondence contains disapproved content (see N.J.A.C. 10A:18-2.14) and then only with the prior approval of the [Superintendent] **Administrator** or designee.

(e) (No change.)

[(f) A confidential list of all correspondence which is read pursuant to this subchapter shall be maintained in the Special Investigations Division of the correctional facility or mail room, or wherever the confidentiality of the list can be maintained.]

#### 10A:18-4.5 Inspection of incoming publications

[(a)] Each incoming publication shall be opened and inspected for contraband, but shall not be read unless there is reason to believe that the publication contains disapproved content (see N.J.A.C. 10A:18-4.9) and then only upon the prior authorization of the [Superintendent] **Administrator** or designee.

[(b) A confidential list of the incoming publications that are read shall be maintained in the Special Investigations Division or mail room of the correctional facility, or wherever the confidentiality of the list can be maintained.]

#### 10A:18-4.7 Inspection and identification of outgoing publications

(a)-(c) (No change.)

(d) Except as stated in (c) above, outgoing publications shall not be opened, read or censored unless there is reason to believe that the publication contains disapproved content (see N.J.A.C. 10A:18-4.9) and then only with the prior approval of the [Superintendent] **Administrator** or designee.

(e) (No change.)

[(f) A confidential list of the outgoing publications that are read pursuant to this subchapter shall be maintained in the investigative unit or mail room of the correctional facility, or wherever the confidentiality of the list can be maintained.]

#### 10A:19-2.3 Release of information

[(a) Personal information concerning inmates and information on matters affecting security within correctional facilities shall be considered confidential and shall not be released to the public (see N.J.A.C. 10A:22-2, Release and Examination of Inmate and Parolee Records).

(b) To ensure compliance with (a) above, employees] **Employees** of the Department of Corrections shall not impart information to news media representatives, free-lancers or other persons not officially connected with a correctional facility or the Department of Corrections without prior authorization from the Office of Public Information except as provided in N.J.A.C. 10A:22. This section shall not restrict the right of employees to comment on public policy or other issues of public concern in a manner which will not interfere with the security or orderly operation of a correctional facility, or result in a breach of necessary confidentiality.

[(c) The Office of Public Information shall consult with the Office of the Commissioner, New Jersey Department of Corrections, whenever possible, before releasing information to the public.]

## CHAPTER 22

### RECORDS

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 10A:22-1.1 Purpose

- (a) The purpose of this chapter is to establish policies and procedures for:
1. The release and examination of inmate [and parole] records; [and]
  2. The expungement or sealing of inmate [and parolee] records[.]; **and**
  - 3. Requests for government records pursuant to N.J.S.A. 47:1A-1 et seq.**

##### 10A:22-1.2 Scope **and applicability**

[This chapter shall be applicable to the records of those inmates sentenced to the custody of the Commissioner of] **The rules in this subchapter apply to** the Department of Corrections.

##### 10A:22-1.3 Definitions

The following terms, when used in this chapter, shall have the following meanings:

**“Custodian of a government record” or “record custodian” means the officer officially designated by formal action of the Commissioner of the Department of Corrections.**

. . .

**“Government record” or “record” means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or**

**deliberative material. A government record shall not include information, which is deemed to be confidential in accordance with N.J.S.A. 47:1A-1 et seq.**

. . .

#### **10A:22-1.4 Forms**

**(a) The following form related to a request for a government record shall be obtained from the Department of Corrections record custodian, the Department of Corrections web site at [www.state.nj.us/corrections](http://www.state.nj.us/corrections), and at correctional facilities:**

**1. Form 110 Department of Corrections Request for Government Records**

#### **10A:22-1.5 Custodian of records**

**(a) Pursuant to P.L. 2001, c. 404, the Commissioner shall designate a custodian of records, who shall be responsible for requests to the Department of Corrections for access to government records.**

**(b) The address and other contact information for the record custodian shall be posted on the Department of Corrections web site at [www.state.nj.us/corrections](http://www.state.nj.us/corrections) and otherwise made available to the public. The contact information is as follows:**

**Department of Corrections Record Custodian  
Office of Policy and Planning, Cubberly Building  
P.O. Box 863  
Trenton, New Jersey 08625-0863**

### **SUBCHAPTER 2. RELEASE AND EXAMINATION OF [INMATE AND PAROLEE] GOVERNMENT RECORDS**

#### **10A:22-2.1 [Records and information] Information pertaining to a victim(s)**

**(a) [Inmate and parolee records which contain personal identifying information pertaining to a] Pursuant to N.J.S.A. 47:1A-2.2, a person convicted of any indictable offense under the laws of this State, any other state or the United States shall be denied access to a government record if the record contains personal information pertaining to the person's** victim(s) or family member(s) of a victim(s) [shall not be released to or examined by the inmate/parolee, or representative thereof unless:

1. The requested public records or information is necessary to assist in the defense of the inmate/parolee; and

2. The inmate/parolee or representative thereof has motioned the court and received a determination by the court that the information is necessary to assist in the inmate's/parolee's own defense].

**(b) [The inmate/parolee or representative thereof shall submit the determination by the court to the Administrator or parole supervisor and to the Commissioner or designee for review and release authorization determination.] An exception to (a) above may be made only if a court, upon motion by the requester or his or her representative, has determined that the information is necessary to assist in the defense of the requester.**

#### **10A:22-2.2 Requests for government records**

**(a) All requests for access to government records pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented, held or controlled by the Department of**

Corrections, shall be in writing on a form approved by the Department. For the purposes of this chapter, access means inspection, examination or copying.

(b) The requester shall be asked to provide the following information on the Form 110 Department of Corrections Request for Government Records:

1. The name, address, and telephone number of the requester;
2. A description of the government record sought, method of access and if copies are sought, the medium requested and mode of delivery;
3. The date submitted to the Department record custodian; and
4. A certification by the requester that they have not been convicted of an indictable offense under the laws of this State, any other state, or the United States.

(c) The request form shall also include an identified space for:

1. The custodian to indicate whether the request is granted or denied;
2. Specific directions and procedures for requesting a record;
3. A statement that prepayment of fees is required and the fees to be charged;
4. The time period within which the Department is required to make the record available;
5. The custodian to sign and date the form;
6. A statement of the requester's right to challenge a decision by the custodian to deny access;
7. The reasons for a denial of a request, in whole or in part;
8. The procedures for challenging a denial of access;
9. The custodian to indicate whether the requester has agreed to grant an extension of time; and
10. The toll free number of the Government Records Council.

(d) Copies of the request Form 110 shall be available at the office of the Department custodian, all correctional facilities and on the Department web site at [www.state.nj.us/corrections](http://www.state.nj.us/corrections).

#### 10A:22-2.3 Procedures for requests for government records

(a) Request Form 110 shall be hand-delivered, mailed, or transmitted electronically by e-mail by the requester to the Department of Corrections custodian of records. Hand-delivery of Form 110 shall be during normal business hours of the Department of Corrections.

(b) Any officer or employee of the Department who receives a request for access to a government record shall direct the requester to the Department of Corrections record custodian.

(c) Upon receipt of the request form, the custodian shall review the request form for clarity and completeness. If the request form is unclear as to the government record requested, the custodian shall advise the requester of the deficiency, provided contact information is included on the form. The custodian may require the requester to provide additional information to identify the record or to ascertain the requester's identity and status to determine whether access is authorized. The custodian shall deny a request for access if the request is unclear or incomplete after attempting to reach a reasonable resolution with the requester. A request shall not be deemed complete until the pre-payment required under this section is received by the Department.

(d) All inquiries and processes involving the request shall include a tracking number.

(e) Upon receipt of a request form, the custodian shall estimate the cost of providing the records and shall require the pre-payment of the estimated sum, and of any special mailing or delivery costs. Payment shall be made by certified check or money order payable to the State of New Jersey. Except as provided otherwise by law or regulation, costs shall be those set forth in N.J.S.A. 47:1A-1 et seq., as amended and supplemented.

(f) The custodian shall sign and date Form 110, enter the estimated fee, tracking number, and provide the requester with a copy.

(g) No fee shall be required for inspecting or examining government records.

(h) Upon request, the custodian may allow requesters to use their own photocopying equipment to copy government records, provided that it will not disrupt the business operations of the Department and will not endanger the government records. No special fee shall be charged to a requester who utilizes their own equipment.

#### **10A:22-2.4 Delivery of records**

The custodian shall notify the requester when the records are available and shall collect any additional fees and charges due prior to delivery of copies.

10A:22-2.5 Availability of records and information to non-Department of Corrections agencies or individuals.

(a) Information from inmate [and parolee] records shall be provided to law enforcement agencies or individuals, who request such information in the performance of their public duties [in accordance with N.J.A.C. 10A:22-2.8].

(b)-(c) (No change.)

10A:22-2.7 Availability of medical record summaries to inmates

(a) [An] **In accordance with N.J.A.C. 13:35-6.5, an** inmate may obtain a copy of a computer generated medical record summary by submitting a written request, on Form MR—022, to the Administrator or designee.

(b)-(h) (No change.)

#### **10A:22-2.8 Immediate access to certain records**

Immediate access ordinarily shall be granted for requests to inspect, examine or copy budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.

#### **10A:22-2.9 Failure to respond**

Except as provided in this subchapter, a custodian shall grant or deny access within seven business days after receiving a request completed and received in accordance with N.J.A.C. 10A:22-2.2 and 2.3 or such additional time as may be allowed by law or these rules or as may be agreed to by the requester. The failure to grant access shall be deemed a denial of the request, unless the requester has elected

not to provide a name, address, telephone number or other means of contact. If the requester has elected not to provide contact information, the custodian shall not be required to respond until seven business days after the requester reappears before the custodian seeking a response to the original request.

#### 10A:22-2.10 Records stored offsite

If the requested record is in storage offsite at a facility outside of the regular business office of the Department, the custodian shall so advise the requester within seven business days after the custodian receives the request. The custodian shall advise the requester of the date when the record will be made available. If the record is not made available by the identified date, the request shall be deemed denied.

#### 10A:22-2.12 Requests for copies of a government record in a specified medium

(a) Unless otherwise specifically requested, copies of records shall be provided in printed form on ordinary business size paper. The requester may request that the Department provide a copy of a record in a specific medium. If the Department maintains the government record in the medium requested, the custodian shall provide the record in the medium sought.

(b) If the Department does not maintain the government record in the medium requested, the custodian shall convert the record to the medium requested if reasonable or provide a copy in some other meaningful medium. If a requester asks for copies of a record in a medium not routinely used by the Department, not routinely developed or maintained by the Department, or requiring a substantial amount of manipulation or programming of information technology, the custodian may charge, in addition to the actual cost of duplication, a special charge which shall be reasonable and shall be based upon the cost of any extensive use of information technology or for the labor cost of providing the service actually incurred. The requester shall be given the opportunity to review and object to the charge prior to its being incurred. If the requester objects to the charge and refuses to withdraw the request, the custodian may deny the request after attempting to reach a reasonable solution that accommodates the interests of the requester and the Department.

(c) Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined or copied is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size paper or involves an extraordinary expenditure of time and effort to accommodate the request, the Department may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies. The requester shall have the opportunity to review and object to the charge prior to its being incurred. If the requester objects to the charge and refuses to withdraw the request, the custodian may deny the request after attempting to reach a reasonable solution that accommodates the interests of the requester and the Department.

#### 10A:22-2.13 Computation of time

**(a) In computing any period of time under P. L. 2001, c. 404 or these rules, the business day a completed request for access is received is not to be included. The last business day of the period so computed is to be included.**

**(b) For purposes of P. L. 2001, c. 404 and these rules, a request for access is deemed to be complete when the requester provides information as required by N.J.A.C. 10A:22-2.2 and 2.3 and pre-pays the fees required by P.L. 2001, c. 404 and these rules.**

10A:22-[2.12] **2.14** Reimbursement for costs of copying

(a) Pursuant to N.J.S.A. 47:1A-[2] **5**, except as otherwise provided in this subchapter correctional facilities and other administrative units within the Department of Corrections may charge the following fees for copying **government** records [deemed to be public]:

1.-3. (No change.)

(b) (No change.)

(c) The copying fees for records other than **government** records [deemed to be public] shall also be based on the fee schedule in (a) above.

(d) When or if fees for the copying of [public] **government** records change in accordance with [the] N.J.S.A. 47:1A-[2] **5**, these changes shall be published as a public notice in the New Jersey Register, and revised in (a) above through a notice of administrative change pursuant to N.J.A.C. 1:30-2.7.

**(e) Additional fees that may be imposed in connection with a request for government records are set forth in N.J.A.C. 10A:22-2.3 and 2.12.**

### SUBCHAPTER 3. [(RESERVED)] **CONFIDENTIALITY OF RECORDS**

#### **10A:22-3.1 Scope and applicability**

**The rules in the subchapter apply to the Department of Corrections.**

#### **10A:22-3.2 Records designated confidential**

**(a) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., as amended and supplemented, any other law, regulation promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court, or any Federal law, Federal regulation or Federal order, the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented:**

**1. Informant documents and statements;**

**2. Special Investigations Division investigations, provided that redaction of information would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility;**

**3. Documents that identify the physician attending an execution;**

**4. Documents pertaining to an individually identifiable crime victim(s), except that the identifiable crime victim shall have access to the documents;**

**5. A record which consists of any alcohol, drug or other substance abuse information, assessment, evaluation, report, summary, history, recommendation,**

treatment, including any assessment instruments.

6. A report or record relating to an identified individual which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement;

7. Comprehensive criminal history information (“rap sheet”);

8. Any record generated by or on behalf of the Department of Corrections in connection with any discrimination or harassment complaint, except information, data and records filed with the New Jersey Merit System Board and the Department of Personnel as public information;

9. Information concerning individuals as follows:

i. Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation;

ii. Home addresses, home telephone numbers, personal e-mail addresses or other personal contact information;

iii. Information in an income or other tax return; and

iv. Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness, except as otherwise required by law to be disclosed.

10. Test questions, scoring keys and other examination data pertaining to the administration of an examination or an application for public employment or licensing;

11. Records of another department or agency allocated to that department in the possession of the Department of Corrections when those records are made confidential by a regulation of that department or agency allocated to that department adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure;

12. Records of the Department of Corrections held by the Office of Information Technology (OIT) or the State Records Storage Center of the Division of Archives and Records Management (DARM), in the Department of State, or an offsite storage facility outside of the regular business office of the Department. Such records shall remain the legal property of the Department and be accessible for inspection or copying only through a request to the proper custodian of the Department of Corrections. In the event that records of this Department have been or shall be transferred to and accessioned by the State Archives in DARM, all such records shall become the legal property of the State Archives, and requests for access to them shall be submitted directly to the State Archives; and

13. The Department of Corrections Disaster/Terrorism Contingency Report.

(b) An inmate shall not be permitted to inspect, examine or obtain copies of documents concerning any other inmate.

10A:23-2.4 Witnesses

(a)-(c) (No change.)

(d) The names of the adult citizen witnesses and alternates shall not be disclosed until after the execution in accordance with N.J.S.A. 2C:49-7.

(e)-(f) (No change.)

(g) The Commissioner shall authorize and permit, upon written request, no more than four adult members of the victim's immediate family to be present at the execution. The names of the members of the victim's immediate family authorized to be present at the execution shall not be disclosed **in accordance with N.J.S.A. 2C:49-7.**

(h)-(k) (No change.)

#### 10A:23-2.8 Operational and professional staff

(a) One physician shall be present at the execution and shall be notified in writing, at least five days prior to the scheduled execution, by the Assistant Commissioner, Division of Operations or designee. **This notification shall be exempt from public access as set forth in N.J.A.C. 10A:22-3.**

1.-2. (No change.)

(b) Two persons who are qualified to operate the equipment utilized to administer the lethal substance shall be selected by the Commissioner as execution technicians. Procedures shall be designed to ensure that the identity of these persons shall be confidential and that these persons shall not be aware of who actually administered the lethal substance **in accordance with N.J.S.A. 2C:49-3.**

(c)-(d) (No change.)

#### 10A:23-2.20 Report of execution procedures

(a)-(b) (No change.)

[(c) The report shall not be considered a public record for any purpose other than as specified by the State prison Administrator or Commissioner.]

#### **10A:31-6.5 Requests for government records**

**Access to records made or maintained by county correctional facilities shall be released in accordance with internal management procedures developed by county authorities.**

#### 10A:31-6.6 Records designated confidential

**(a) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., as amended and supplemented, any other law, regulation promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court, or any Federal law, Federal regulation or Federal order, the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented:**

**1. Informant documents and statements;**

**2. Internal Affairs investigations, provided that the redaction of information would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility;**

**3. Documents pertaining to an individually identifiable crime victim(s), except that the identifiable crime victim shall have access to the documents;**

**4. A record which consists of any alcohol, drug or other substance abuse information, assessment, evaluation, report, summary, history, recommendation, treatment, including any assessment instruments;**

5. A report or record relating to an identified individual which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement;

6. Any record generated by or on behalf of the county correctional facility in connection with any discrimination or harassment complaint, except information, data and records filed with any agency as public information.

7. Information concerning individuals as follows:

i. Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation;

ii. Home addresses, home telephone numbers, personal e-mail addresses or other personal contact information;

iii. Information in an income or other tax return; and

iv. Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness, except as otherwise required by law to be disclosed;

8. Test questions, scoring keys and other examination data pertaining to the administration of an examination or an application for public employment or licensing; and

9. Records of another department or agency allocated to that department in the possession of the county correctional facility when those records are made confidential by a regulation of that department or agency allocated to that department adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure.

(b) An inmate shall not be permitted to inspect, examine or obtain copies of documents concerning any other inmate.

#### 10A:31-6.7 Information pertaining to a victim(s)

(a) Pursuant to N.J.S.A. 47:1A-2.2, a person convicted of any indictable offense under the laws of this State, any other state or the United States shall be denied access to a government record if the record contains personal information pertaining to the person's victim(s) or family member(s) of a victim(s).

(b) An exception to (a) above may be made only if a court, upon motion by the requester or his or her representative, has determined that the information is necessary to assist in the defense of the requester.

#### 10A:31-6.8 Availability of information to non-institutional persons or outside agencies

(a) Information from adult inmate and parolee records shall be provided to law enforcement agencies or persons, who request it in the performance of their public duties[, in accordance with N.J.A.C. 10A:31-6.10].

(b) Adult inmate or parolee records may be made available to the following agencies or persons:

1.-3. (No change.)

4. The **New Jersey** State Parole Board;

[5. The Division of Parole;]

Recodify existing 6.-7. as **5.-6.** (No change in text.)

(c) (No change.)

10A:31-6.13 Reimbursement for costs of copying

(a) Pursuant to N.J.S.A. 47:1A-[2] 5, except as otherwise provided in this subchapter, adult county correctional facilities may charge the following fees for copying **government** records [deemed to be public]:

1.-3. (No change.)

(b) (No change.)

(c) The copying fees for documents or records other than **government** records [deemed to be public] shall also be based on the fee schedule in (a) above.

(d) When or if fees for the copying of [public] **government** records change in accordance with the N.J.S.A. 47:1A-[2] 5, these changes shall be published as a public notice in the New Jersey Register.

**(e) Additional fees that may be imposed in connection with a request for government records are set forth in N.J.A.C. 10A:22-2.3 and 2.12.**